

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

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FILE: B-211051**DATE:** March 30, 1983**MATTER OF:** Equipment Renewal Company**DIGEST:**

A bidder's ability to perform a contract according to the specifications is a matter of responsibility, and GAO will not review an affirmative determination of responsibility except in limited circumstances.

Equipment Renewal Company (ERC) protests the award of a contract by the Department of Energy (DOE) to Sunshine Iron Works under Invitation for Bids (IFB) number DE-FB96-83-P010877. The IFB solicited bids to furnish wellhead equipment. ERC asserts that the awardee does not intend to perform in accordance with the specifications. We will not consider the merits of this protest.

The basic protest concerns Sunshine's responsibility, that is, its ability and intention to perform the contract in accordance with its terms. J. Baranello & Sons, 58 Comp. Gen. 509 (1979), 79-1 CPD 322. In this connection, the enclosures to the protest letter indicate that Sunshine's bid was considered to be responsive (it took no exception to the IFB's requirements) and that the firm was found to be responsible. GAO does not review affirmative determinations of responsibility absent circumstances not relevant here. We also point out that it is the contracting agency's responsibility to administer the contract so as to obtain the performance it contracted for, and that contract administration is not within the purview of GAO's bid protest procedures. Decision Sciences Corporation, B-205582, January 19, 1982, 82-1 CPD 45.

Moreover, the protest is untimely. ERC initially filed a protest on January 21, 1983 with DOE against the contract award. DOE verbally denied the protest on February 14, 1983, in a telephone conversation initiated by ERC. DOE confirmed this denial in a letter dated February 7, 1983. ERC's protest to our Office was received on March 9, 1983.

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Section 21.2(a) of our Bid Protest Procedures, 4 C.F.R. Part 21 (1982), requires that when a protest is initially filed with the contracting agency, a subsequent protest to our Office must be filed within 10 working days of the protester's knowledge of the initial adverse agency action on the protest. See Surgical Instrument Company of America, B-208337, August 18, 1982, 82-2 CPD 152. ERC's telephone call to DOE on February 14, 1983 provided ERC with knowledge of adverse agency action on the protest. Therefore, ERC's protest to our Office should have been filed within 10 working days thereafter to be considered timely.

The protest is dismissed.

Harry R. Van Cleve
Harry R. Van Cleve
Acting General Counsel